

DEVELOPMENT REVIEW COMMITTEE

Tuesday, November 15, 2016

MEETING MINUTES

The Monroe County Development Review Committee conducted a meeting on **Tuesday, November 15, 2016**, beginning at 1:00 p.m. at the Marathon Government Center, Media & Conference Room (1st floor, rear hallway), 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER

ROLL CALL by Ilze Aguila

DRC MEMBERS

Kevin Bond, Planning & Development Review Manager	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present

STAFF

Steve Williams, Assistant County Attorney	Present
Ed Koconis, Planner	Present
Peter Morris, Assistant County Attorney – joined midway through meeting	Present
Mary Windgate, Senior Flood Plain Coordinator	Present
Ilze Aguila, Sr. Planning Commission Coordinator	Present

CHANGES TO THE AGENDA

There were no changes to the agenda

MINUTES FOR APPROVAL

September minutes will be approved at the December DRC meeting.

MEETING

New Items:

1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 122-4. “STANDARDS FOR ISSUANCE OF BUILDING PERMITS IN AREAS OF SPECIAL FLOOD HAZARD”; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE.
(File 2016-182)

Mr. Koconis presented the staff report. The proposed amendment is to remove the maximum 300 square foot limit only for non-residential construction and substantial improvement. There have been a lot of variances for these and they have routinely, the last 10 out of 12, been approved. The reason staff recommends approval is because these are just for commercial, non-residential type uses for storage and parking. The residential limit is not being changed. In addition, there is a scrivener's error in 122-4(B)(3) between a (B) and (C) which is being corrected to address the piling requirement. Mr. Koconis stated he was available for questions.

Mr. Bond asked if there were any questions or comments from staff and there were none.

Mr. Bond asked if there were any questions or comments from the public.

Ms. Deb Curlee asked if the reason for doing this was just to avoid having to ask for a variance. Mr. Koconis explained that the history on this, particularly with residential, ties back to the creation of downstairs enclosures where people actually lived. But with commercial, it's not the same issue. Many of the variances are for parking of commercial vehicles. They get approved because they meet the requirements anyway, and commercial is allowed to flood proof differently than residential so the effects can be mitigated differently. Staff's concerns for commercial are far less than for residential. It's for parking and limited storage, that's it, and that's why they tend to get approval recommendations. Ms. Deb Curlee asked if this eliminates the 300 foot limit, what would be the limit. Mr. Koconis explained it could be as large as the footprint of the building. Mr. Bond interjected it would still be governed by things such as setbacks, floor area ratios, open space, etc.

Ms. Deb Curlee stated that she does not see why this has to be changed when getting a variance was working well. Mr. Koconis stated the planning argument for that is if there is a regulation where a variance is routinely approved, general planning practices state there's an issue with the regulation. Ms. Curlee asked if all 11 of the 12 variances were for the footprint of the building. Mr. Koconis corrected that it was 10 of 12, and he did not know that answer.

Mr. Hunter asked why the two were denied. Mr. Koconis indicated one was residential and had a flood and FEMA component. The Board approved the variance as there was an ADA requirement. The name was Brown. Mr. Hunter asked if that was the kid that had a motorcycle accident. Mr. Koconis indicated that was his understanding from other staff. Ms. Curlee noted that it was residential. Mr. Koconis reported that the other one was on Conch Key in a V-Zone, but he did not have the details. Mr. Hunter asked if the "driver" for this change was because variances being requested were routinely granted. Ms. Curlee also asked why FEMA wasn't all over this since even with breakaway walls, it's under a commercial building where people work, as she could not imagine anything being built downstairs enclosing possibly the whole footprint of a building.

Mr. Williams responded that commercial has different rules and you can flood proof for commercial as compared to residential, and you can enclose commercial. Mr. Bond interjected that the County's 300 square foot limit is a self-imposed restriction, which is more restrictive than the FEMA requirements, and reiterated that there are different standards for commercial

uses, that commercial can flood proof. Mr. Koconis stated the County had issues with people living below the flood plain with residential. Mr. Hunter asked if the assumption was that that wouldn't happen because it's commercial. Mr. Koconis responded that was correct. Ms. Curlee asked how you would know that. Mr. Koconis said it's not allowed. Ms. Curlee stated there are still people living in downstairs enclosures and people living in commercial. Mr. Koconis stated he did not know all of the history on this. Ms. Curlee stated somebody must have a reason.

Mr. Hunter also inquired as to flood proofing, stating residential can do all of the flood proofing that commercial can do, it just doesn't allow more than 300 square feet, and also asked if you can do whatever you want with the downstairs enclosure as long as you have the openings for water to go through. Mr. Koconis responded that was correct, in an A Zone.

Ms. Wingate, the Senior Flood Plain Coordinator, interjected that it was not a V-Zone in Conch Key, but rather on Big Coppitt Key, the Kuhnke property, that had been denied, a private residence with an illegal enclosure in a V-Zone. Brown was approved, not denied. Brown was in a much less hazardous flood zone. Staff had recommended denial, but the Board approved it and FEMA was not happy. Ms. Curlee then asked if all the variances that were passed were for commercial properties. Ms. Wingate responded they were for non-residential properties, storage and parking areas such as boat storage, airplane hangers and parking garages, things built compliant with all regulations for below base flood areas, vented, no partitions, no AC, no habitation. The only real variance was to the 300 square feet.

Mr. Bond asked if there were any further comments or questions.

Mr. Hunter wanted to retract a prior statement, clarifying that with residential you need to have one square inch for every square foot open to allow water to pass through, therefore you cannot flood proof residential. Mr. Hunter asked if an accessory structure in residential zoning would be allowed and included in this, such as a garage in an improved subdivision. Mr. Williams, Mr. Koconis and Mr. Bond all stated this was strictly non-residential. Ms. Wingate stated accessory structures in residential areas are treated differently. Mr. Hunter asked if this was only accessory to commercial. Mr. Koconis stated that was correct and only non-residential, attached to the actual structure as well as accessory, reiterating this ordinance does not touch residential.

Mr. Hunter's last comment was that parking is understandable, but limited storage has no definition. Ms. Wingate stated there is a definition which is storage of items that can withstand exposure to flood water, most variances being for parking. Mr. Hunter stated that even with residential the use is for parking and limited storage, but he has looked and has not found the definition for limited storage. He encouraged staff to better define it. Personally, he has a large downstairs enclosure and has a lot of stuff stored in it. Ms. Wingate reiterated there is a definition and it is incidental items generally able to withstand exposure to flood water. Anything that's going to get ruined in a flood besides a lawnmower is more than limited storage. Mr. Hunter repeated that he would encourage staff to clarify that in the code. Mr. Koconis read verbatim what is in presently in Code Section 122-3, under permit requirements, subsection (A) the definitions.

Ms. Curlee then stated she believed this would impact the insurance of a commercial building. Mr. Koconis stated it would not if they are just parking. Mr. Hunter stated where this is going to go, that the definition is not what the commercial enclosure is going to be used for. If it's used for parking, that's understandable, but if a business goes to the expense of closing that and using it for storage, it's probably going to be used for more. Ms. Wingate stated the permit would be conditioned that it can't be used for items vulnerable to flood damage. Mr. Koconis stated the code says limited storage and parking only, and that's what they're stuck with. Mr. Williams stated just because we're doing away with the variance does not mean they will be approved every time they apply, that it still must be approved by staff. Mr. Koconis also stated it still has to comply with the code, and that the majority of these are only for a variance on size and they must state what they are applying for. Mr. Hunter stated he made his point. Ms. Curlee asked if it stated that it can't go beyond the footprint of the building. Ms. Wingate stated it would generally be within the footprint. Ms. Curlee stated it should say that.

Mr. Koconis explained that there would then be no way to address accessory structures. And Mr. Bond clarified that if it goes beyond the footprint, it's an addition to a building, which needs a permit from the County. Mr. Koconis further explained that this is addressing structures below the base flood level, whether under a building or standalone accessory. Mr. Bond stated that accessory structures are addressed in another part of the code stating cumulative accessory structures can't exceed the amount of principal structures that you have. There is a limit elsewhere in the code and this is only for flood plain purposes. Ms. Curlee was adamant that based on what she knows, people will find a way around the rules and it's naïve to think this won't be problematic down the line. Mr. Hunter said his concern is for the same reason, how people will use this, that it is likely to be taken advantage of. He has watched what people do and they push every envelope possible.

Mr. Bond explained this is a flood ordinance relative to FEMA requirements for the NFIP. Permits are conditioned with what is allowed in the enclosure, residential or commercial. If the property owner elects to absorb the risk of storing something the permit precludes, FEMA is not going to insure the loss. Ms. Wingate agreed the loss would not be insured and that is why there's a Code Compliance Department. It can't be assumed someone is going to break the law. Mr. Hunter stated the consequences of what is being done can be anticipated. The concern is present but if there's a driving need to do this, then the concern isn't enough to stand in the way of it.

Mr. Bond asked for further public comment. Being none, public comment was closed. Staff recommendation was for approval.

ADJOURNMENT 1:27 p.m.